

Message Text

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46/17

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 L-02 SS-15 NSC-05 IO-10

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R 141800Z MAY 75

FM AMEMBASSY PARIS

TO SECSTATE WASHDC 9386

INFO AMEMBASSY LONDON

AMEMBASSY BONN

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C O R R E C T E D C O P Y (PARA 2 LINE 13 OMMITTED)

E. O. 11652: N/A

TAGS: EAIR, FR

SUBJ: CIVAIR: PANAM COMMISSION

REF: (A) STATE 109664, (B) PARIS 10252

1. JACQUES MAIRE OF LAW FIRM CLEARY GOTTlieb
WHICH HAS BEEN RETAINED BY PANAM CALLED AT EMBASSY
AT PANAM REQUEST MAY 13 TO DISCUSS PANAM'S CURRENT
PROBLEMS WITH GOVERNMENT AGENTS' COMMISSIONS. MAIRE
INFORMED US PANAM HAD BEEN NOTIFIED BY SGAC LETTER
DATED MAY 6 THAT SGAC WAS FIXING AGENTS' COMMISSIONS
AT 7.5 PERCENT EFFECTIVE MAY 1. REASON GIVEN BY SGAC
WAS DESIRE AVOID DISORDERLY COMPETITION IN ABSENCE
OF REGULATION OF COMMISSION FEES PENDING NEGOTIATED
SETTLEMENT AMONG CARRIERS IN IATA FRAMEWORK. SGAC
LETTER INDICATES AGENTS' COMMISSIONS FOR CHARTERS
REMAIN UNCHANGED AT 5 PERCENT AND
SUPPLEMENTARY COMMISSION OF 2.5 PERCENT AUTHORIZED
FOR ITC'S. (TWA AND OTHER CARRIERS SIMILARLY
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INFORMED.) TEXT OF SGAC LETTER POUCHED EB/AVP.

2. MAIRE SAID PANAM WAS DETERMINED CONTEST SGAC ORDER, ESPECIALLY SINCE ALL PANAM SALES IN FRANCE NOW WERE OFF-LINE. AKILE CLEARY GOTTLIEB HAS AS YET REACHED NO FIRM CONCLUSIONS ON RECOURSE OPEN TO PANAM, MAIRE SAID INITIAL RESEARCH SUGGESTED PANAM COULD EITHER BRING SUIT IN FRENCH ADMINISTRATIVE COURTS TO HAVE SGAC ORDER SET ASIDE ON GROUNDS OF ABUSE OR MISUSE OF POWER, OR ELSE PAY 10 PERCENT COMMISSION TO AGENTS IN DISREGARD OF SGAC ORDER AND INVITE COURT ACTION BY SGAC. MAIRE DID NOT BELIEVE SGAC WAS EMPOWERED FIX AGENTS' COMMISSIONS; HE CONTENDED THAT ONLY FINANCE MINISTRY HAS THIS POWER AND THEN ONLY IN TERMS OF WHAT COMMISSIONS INTERMEDIARIES WERE ENTITLED TO REQUEST. SGAC LETTER HAD ALSO SPECIFIED THAT EARLIER IATA RESOLUTIONS WERE APPLICABLE FOR PERIOD APRIL 1-30 (I.E., 7 PERCENT COMMISSION); MAIRE SAID THIS POSED SPECIAL PROBLEMS FOR PANAM SINCE IT HAD PROMISED 10 PERCENT COMMISSION TO AGENTS FOR THAT PERIOD.

3. MAIRE EXPLAINED THAT PURPOSE OF VISIT WAS SIMPLY TO APPRISE EMBASSY OF DEVELOPMENTS, BUT IT WAS EVIDENT THAT HE (AND PANAM) WERE HOPEFUL OF EMBASSY SUPPORT. SINCE MAIRE WAS REPRESENTING PANAM WE DREW ON REF A, POINTING OUT THAT USG HAS TAKEN NO POSITION ON MERITS OF DISPUTE.

4. COMMENT: WHETHER OR NOT PANAM ON ADVICE OF COUNSEL INITIATES OR INVITES COURT ACTION, WHICH IS OF COURSE ITS OWN DECISION, WE DO NOT FORESEE SGAC BACKING DOWN EASILY. THERE IS PRECEDENT FOR GOF OF SEVERAL OTHER COUNTRIES THAT HAVE ALSO ORDERED LIMITATION OF AGENTS' COMMISSIONS TO 7.5 PERCENT, AND WE WOULD BE SURPRISED IF THERE HAD NOT BEEN ACTIVE ECAC CONSULTATIONS ON THAT SUBJECT. MOREOVER, WHILE RATE ARTICTS IN CIVAIR BILATERALS MAY NOT BE APPLICABLE (PARA 3 REFTL), WE WONDER WHETHER GOF MIGHT NOT BE ABLE INVOKE SECTION IV(B) OF ANNEX TO US-FRANCE BILATERAL, WHICH PROVIDES LIMITED OFFICIAL USE

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THAT INTERESTS OF CARRIER OF OTHER PARTY "BE TAKEN INTO CONSIDERATION SO AS NOT TO AFFECT UNDULY THE SERVICE WHICH THE LATTER PROVIDE ON ALL OR PART OF THE SAME ROUTE." WHILE PANAM SALES IN FRANCE ARE NOW OFF-LINE BY VIRTUE OF SUSPENSION OF SERVICE, PANAM REMAIN DESIGNATED CARRIER FOR US-FRANCE ROUTE. SGAC COULD CONTEND THAT PANAM PAYMENT OF 10 PERCENT COMMISSION TO TRAVEL AGENTS IN FRANCE WOULD BE

INCENTIVE FOR THEM TO TOUT ADDED ATTRACTION OF
LONDON STOPOVE
FOR PARIS-ORIGIN TRAFFIC CONNECTING
IN LONDON WITH PANAM FLIGHTS TO US, WHICH GOF
MIGHT CHOOSE TO CONSTRUE AS UNDULY AFFECTING AIR FRANCE
ABILITY MARKET ITS DIRECT PARIS-US SERVICE.
RUSH

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